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Applicants hereby authorize the Commissioner to charge Deposit Account 19-3550 for any additional fees resulting from this amendment.

### **REMARKS**

Applicants urge reconsideration of the subject U.S. patent application in view of the preceding amendments and the following remarks.

#### **Claim Rejections 35 U.S.C. §103 The Cervantes et al. Patent**

The Examiner has rejected Claims 24, 31 and 38 under 35 U.S.C. §103 as being unpatentable over Cervantes et al., U.S. Patent 6,170,225. Applicants urge that, in view of the following remarks and the attached Declaration, the subject claims are not taught or suggested by the Cervantes et al. Patent.

The Examiner alleges that the Cervantes et al. Patent teaches a method of providing containers with a first diameter to an applying machine including a drum with a plurality of jaws; moving a first carrier through the applying machine; positioning the first carrier over the containers; adjusting a transverse distance between the jaws; providing containers having a second diameter to the applying machine and then moving a second carrier through the applying machine. The Examiner further alleges that it would be obvious to one having ordinary skill in the art to select a second diameter that is 10% less than the first diameter and that Cervantes et al. Patent inherently teaches a first diameter with a specific first length and a second diameter with a specific

container pitch smaller than the first length dependent on the characteristics of the carrier.

The Examiner does not reference the limitations of Claims 24, 31 or 38 requiring that the second carrier for containers having a second diameter includes centers of elongated apertures spaced at the same pitch length from centers of longitudinally adjacent apertures as those in the first carrier for containers having a first diameter. As such, the claimed invention requires maintenance of a common pitch length for use between sets of containers having different diameters. Applicants urge that maintaining constant pitch between different carriers used for differently sized containers is a requirement of the claimed invention that is neither taught nor suggested by the prior art. In fact, the attached Declaration and Exhibits establish that existing carriers increase the pitch length when packaging increased diameter containers.

Applicants urge that the Cervantes et al. Patent does not teach maintaining a constant pitch between different sizes of carriers and containers and, in fact, teaches away from such claim requirements. The Cervantes et al. Patent teaches at Column 9, lines 2-7 that changes in diameters of containers require replacement of stars 12, blades and dividers 36 and removable device 44. Specifically, removable device 44, pictured at Figs. 7 and 8A, must be replaced to accommodate different carriers for different sized containers. More specifically, the Cervantes et al. Patent teaches at Col. 8, lines 45-57, that the removable device 44 must be replaced when packaging containers having different diameters. The removable device 44 includes: a metallic frame 39, support 37,

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the carrier rollers 10, the support 38, the feed trough 13, the floor bearings 18, the shafts 16, the plates 11, the jaws 15, the wall bearings 24, the shafts 20 and the central release plate 19. Each of these elements require replacement, in part, to accommodate a carrier having a new longitudinal pitch. The jaws and the related drum include a fixed circumference which must be replaced in the system taught by the Cervantes et al. Patent to accommodate a carrier having a new longitudinal distance between each pair of openings, i.e. the pitch length. Such an action would not be required when using a carrier having a constant pitch for different sized containers, as in the claimed invention.

As referenced in the attached Declaration, systems such as taught by the Cervantes et al. Patent require a second carrier having a larger pitch to accommodate containers having a larger diameter. This is consistent with the teachings of the Cervantes et al. Patent that require removal and replacement of numerous components of the machine to accommodate a second carrier having such larger pitch. These teachings are directly contrary to the claimed invention that requires maintaining a common pitch between different carriers for unitizing different containers having different diameters.

As a result, Applicants urge that the Cervantes et al. Patent does not teach or suggest the claimed invention as required by 35 U.S.C. §103.

**Claim Rejections**  
**35 U.S.C. §103**  
**The Krogman et al. Patent in View of the Odum et al. Patent**  
**and Further in View of the Fisher Patent**

The Examiner has rejected Claims 24 and 26-39 under 35 U.S.C. §103 as being unpatentable over Krogman et al., U.S. Patent 5,383,321, in view of Odum et al., U.S. Patent 6,055,791 and, in the case of Claim 25, further in view of Fisher, U.S. Patent 3,044,230. Applicants urge that, in view of the previous and following remarks and the attached Declaration, the subject claims are not taught or suggested by the Krogman et al. Patent and/or the Odum et al. Patent and/or the Fisher Patent, alone or in combination.

Like the Cervantes et al. Patent, neither the Krogman et al. Patent, the Odum et al. Patent nor the Fisher Patent teach or suggest maintaining a common pitch between a carrier used for a first set of containers and a second carrier used for a second set of containers. The Examiner does not address this claim requirement, present in each independent claim, nor does the Examiner direct Applicants to the portions of the cited references that teach or suggest such a requirement. On the contrary, as discussed in the attached Declaration, industry practice demonstrates that prior art carriers required an increase in pitch length as the container size increases. Such practice required the installation and use of numerous applying machines to package containers having a range of diameters or the use of replaceable drums, jaws and related hardware (Second Weaver Declaration ¶¶10-13). Instead, the claimed invention permits the use of a single applying machine by maintaining a pitch dimension among different carriers for

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packaging different container sizes.

While the Odum et al. Patent appears to address the need for a single applying machine to package multiple sizes of containers, the Odum et al. Patent further teaches that such single applying machine is for use with "a new size carrier web." *See* Odum et al. Patent, Col. 1, lines 57-59. In addition, the Odum et al. Patent only teaches a method of packaging containers having different heights (See Col. 9, lines 7-36) and not containers having different diameters as required in the claimed invention. The Odum et al. Patent does not teach or suggest a system for packaging different diameter containers using a single applying machine and multiple carriers that maintain a constant pitch length.

Applicants urge that the claimed invention is not taught or suggested by the cited prior art.

#### **Request for a Telephone Interview**

Applicants respectfully urge that, in view of the subject remarks and the attached Declaration, the subject U.S. patent application is in condition for allowance. Should the Examiner require clarification of any issue herein or find that any remaining claim remains rejected, Applicants respectfully request the courtesy of a telephone interview to discuss any outstanding issue. Specifically, Applicants have enclosed physical specimens of the carriers referenced and photocopied in the attached Declaration that may require additional explanation and/or demonstration beyond the explanations

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presented in these remarks and the attached Declaration. Should the Examiner so require, Applicants alternatively request an in-person interview to further clarify any remaining issues.

### Conclusion

In view of the above Amendment and remarks, Applicants sincerely believe that Claims 24-39 of this patent application are now in condition for allowance and early allowance is respectfully requested. Applicants urge the Examiner to contact the undersigned should any issue require further consideration.

Respectfully submitted,



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